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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY LLC )

Plaintiff, )

vs. ) Civil No. 04-325 Erie  
Judge Sean J. McLaughlin

VICTORY ENERGY OPERATIONS )  
LLC, )

Defendant. )

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER  
DEPOSITION OF ALAN W. CHRISTIAN

Taken on Monday, December 5, 2005  
at 10:08 a.m.

At Hall Prangle & Schoonveld, LLC  
300 South Fourth Street, Suite 1001  
Las Vegas, Nevada

Reported by: MICHELLE C. JOHNSON

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PROCEEDINGS

10:08 A.M.

THE VIDEOGRAPHER: We are now on the record.  
Today is Monday, December 5th, 2005, and the time is  
approximately 10:08 a.m.

This begins Tape No. 1 in the videotaped  
deposition of Alan Christian. We're at the Law  
Offices of Hall Prangle & Schoonveld, LLC, 300 South  
Fourth Street, Las Vegas, Nevada.

This deposition has been ordered by  
Christopher Sheean, representing the defendant. We  
are here in the matter of "Indeck Keystone Energy,  
LLC, Plaintiff, versus Victory Energy Operations,  
Defendant." This case is in the United States  
District Court, Western District of Pennsylvania.  
Civil Action No. 04-325 Erie.

My name is Tim Hartmanszerbiec, Court Video  
Specialist, for Certified Legal Videography, Las  
Vegas, Nevada. The court reporter is Michelle  
Johnson, for Cameo Kayser & Associates.

Will counsel please identify yourselves and  
whom you represent for the record, starting with the  
plaintiff's counsel.

MR. WILLIAMS: My name is Robert Williams. I  
represent the plaintiff, Indeck Keystone Energy, LLC.

MR. SHEEAN: My name is Christopher Sheean.

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I'm with Wildman, Harrold, Allen & Dixon in Chicago.  
And I represent the defendant, Victory Energy  
Operations, LLC.

THE VIDEOGRAPHER: The reporter will  
administer the oath.  
Whereupon --

ALAN W. CHRISTIAN,  
being first duly sworn to tell the truth, the whole  
truth, and nothing but the truth, was examined and  
testified as follows:

EXAMINATION

BY MR. SHEEAN:

**Q. Sir, would you please state your full name for the record.**

**A. Alan Wayne Christian.**

**Q. Mr. Christian, where do you reside?**

**A. In Danville, California.**

**Q. Can you please give your current address.**

**A. 593 Old Orchard Drive, Danville, California, 94526.**

**Q. Let the record reflect that this is the deposition of Alan Wayne Christian taken pursuant to subpoena and notice, pursuant to the Federal Rules of Civil Procedure and all applicable local rules.**

**Mr. Christian, have you ever had your**

1 (Pages 771 to 5)

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1 those types of boilers that you are referring to?

2 A. Well, the ones that I was interested in burn  
3 primarily ag waste, which is prevalent on the West  
4 Coast, and particularly in California. And we've been  
5 very successful selling those, so there were a lot of  
6 those types of boilers that formed a key base for a  
7 segment of my market.

8 Q. And just, again, so the record is clear, can  
9 you define for me what your understanding of  
10 aftermarket parts is?

11 A. Well, these were parts for those boilers that  
12 were manufactured by the division, the company, that  
13 had now become known as Indeck Keystone.

14 Q. Why did you say that that was an important  
15 point that you and Mr. Petcos reached this handshake  
16 over-the-phone deal for your company to continue to  
17 offer those parts?

18 A. A significant portion of the products that I  
19 represent service that market. They're not all boiler  
20 company manufactured parts, but they all fit together  
21 as a package. And that formed a significant portion  
22 of my revenue, and if I lost the boiler portion of  
23 that, the boiler parts manufacturing portion, it would  
24 force me to reevaluate how I was going to service the  
25 long-term existing customers as well as replace that

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1 business with some other manufacturer's parts.

2 Q. Did you and Mr. Petcos have any other  
3 conversation during this initial discussion regarding  
4 what types of products Christian Power would continue  
5 to represent?

6 A. Um, my interest focused on this aftermarket  
7 solid fuel market. And that's really the primary  
8 focus of our conversation.

9 Q. At any point during that initial  
10 conversation, did Mr. Petcos say anything to the  
11 effect that Christian Power would need to represent  
12 all of the products of Indeck if it wanted to continue  
13 to represent the aftermarket parts sector?

14 MR. WILLIAMS: Objection to the form.

15 THE WITNESS: No.

16 BY MR. SHEEAN:

17 Q. Was there any mention about the  
18 representative relationship between Christian Power  
19 and Victory Energy during that initial conversation?

20 A. No.

21 Q. And in the fall of 2004, when this initial  
22 conversation took place, was Christian Power still a  
23 representative for Victory Energy?

24 A. Yes.

25 Q. And did Christian Power continue to sell

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1 aftermarket parts in the fall of 2004 after the  
2 transition of the assets from EPTI to IKE?

3 A. Yes, we did.

4 Q. And did you close on any sales during that  
5 time for IKE?

6 A. Yes, uh-huh. Some fairly significant orders.

7 Q. And during that same time period, the fall of  
8 2004, were you able to obtain any contracts with  
9 Victory Energy?

10 A. Sometime in the second half of '04, I got the  
11 one and only Victory order, which was for HRSGs. The  
12 one and only Victory order that I was involved with.

13 Q. Had you -- strike that.

14 During the time that you were a  
15 representative for Victory Energy, had you submitted  
16 other proposals from Victory to potential customers?

17 A. Yes. Yes, we had.

18 Q. Do you know approximately how many, off the  
19 top of your head?

20 A. No, I don't. But it was probably in excess  
21 of 20.

22 Q. Is there any specific reason in your mind --  
23 strike that.

24 Did you believe that you could be successful  
25 if you continued as a representative for Victory

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1 Energy?

2 A. Yes, I could have survived representing  
3 Victory. Yes, I could have been successful.

4 Q. During the time that you were a  
5 representative for Victory Energy, did you offer any  
6 proposals for water-tube package boilers?

7 A. Yes.

8 Q. From Victory Energy?

9 A. From Victory.

10 Q. Were you in any way dissatisfied with the  
11 products that Victory Energy offered for sale?

12 A. In general, no, I was not dissatisfied.  
13 Every job has a lot of details, and it's impossible  
14 for every job to be proposed exactly the way you would  
15 envision it. So I can't say it was always my opinion  
16 that it was the best way to propose, but in general I  
17 was happy with the way Victory responded.

18 Q. Why did Christian -- Why did Christian Power  
19 terminate its rep agreement with Victory Energy?

20 A. Well, ultimately I had to make a decision  
21 between Victory and Indeck Keystone. So the primary  
22 reason was to be able to maintain my after market with  
23 the solid fuel boilers.

24 Q. Why did Christian Power have to make a  
25 decision between Victory Energy and Indeck Keystone

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1 Energy?

2 A. Because Indeck Keystone considered it -- in  
3 my opinion, Indeck Keystone considered it a conflict  
4 to represent both Victory and Indeck Keystone.

5 Q. Whom from -- strike that.

6 Did anyone from Indeck Keystone Energy tell  
7 you that it was a conflict of interest for Christian  
8 Power to represent both Victory Energy and Indeck  
9 Keystone Energy?

10 A. Yes.

11 Q. Who?

12 A. Chris Petcos.

13 Q. Anyone else?

14 A. Well, I'm pretty sure just about anybody at  
15 Indeck Keystone would have said that.

16 Q. I don't want you to guess or speculate; I  
17 just want you to tell me what you recall. Do you  
18 recall any conversations with anyone, other than Chris  
19 Petcos, at Indeck Keystone Energy wherein they stated  
20 that it would be a conflict of interest for Christian  
21 Power to continue to represent Victory Energy and  
22 Indeck Keystone Energy?

23 A. Well, Chris was my primary contact, so he was  
24 the one carrying the message, I think.

25 Q. Did anyone within Indeck, but outside of

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1 Indeck Keystone Energy, ever discuss with you the  
2 belief that it was a conflict of interest for  
3 Christian Power to continue to represent both Victory  
4 Energy and Indeck Keystone Energy?

5 A. Well, there were meetings, even at PowerGen,  
6 where I'd say a number of Indeck individuals were  
7 present when the topic was being discussed.

8 Q. Well, I want to go through --

9 THE VIDEOGRAPHER: Four minutes.

10 MR. SHEEAN: We'll start this process.

11 Q. I want to go through with you the  
12 conversations you had leading up to that decision.  
13 You told about the first conversation you had with  
14 Mr. Petcos over the phone wherein he said you could  
15 continue to represent the aftermarket parts, correct?

16 A. Yes, uh-huh.

17 Q. When was the next time you had any  
18 conversation with anyone associated with Indeck  
19 relating to your continuation of -- as a  
20 representative for Victory Energy?

21 A. Well, those conversations went on, I'd say,  
22 pretty regularly through the fall and winter of '04,  
23 even into early '05.

24 Q. To the best of your recollection, when was  
25 the next specific meeting or conversation that you can

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1 recall with anyone relating to whether or not  
2 Christian Power would be allowed to continue to  
3 represent both Indeck Keystone Energy and Victory  
4 Energy?

5 A. I don't think that position was clearly  
6 stated until probably November of '04. And I don't  
7 think it was a firm statement even then. But by  
8 December of '04, it was.

9 MR. SHEEAN: Okay, I don't want to get cut  
10 off, so let's take our break now.

11 THE VIDEOGRAPHER: This is the end of Tape  
12 No. 1. We're off the record at 11:05 a.m.

13 (Recess taken.)

14 THE VIDEOGRAPHER: This is the beginning of  
15 Tape No. 2. We're on the record at 11:12 a.m.

16 You may proceed.

17 BY MR. SHEEAN:

18 Q. Mr. Christian, before we went off the record,  
19 you had mentioned a couple of conversations in the  
20 fall of 2004. I believe you testified that in  
21 November of 2004, the prospect that it would be a  
22 conflict of interest to represent both Victory Energy  
23 and Indeck Keystone Energy was first raised, but it  
24 wasn't set as a definitive position; is that correct?

25 A. That's correct.

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1 Q. And then in December of 2004, it was stated  
2 as an affirmative position by Indeck Keystone Energy,  
3 correct?

4 A. As I recall, I think the first -- we'll call  
5 it absolute statement -- happened at PowerGen in a  
6 meeting there.

7 Q. The meeting in November of 2004, was that  
8 another telephone conference with Chris Petcos?

9 A. Yes, uh-huh.

10 Q. Anyone else on the line in that conversation?

11 A. I don't recall ever having a conference call  
12 when there was more than just myself and one other  
13 person.

14 Q. And then in December, the meeting that you  
15 referenced at PowerGen, that was in person, correct?

16 A. That's correct.

17 Q. And that was in Orlando?

18 A. Yes.

19 Q. Do you recall where the conversation --  
20 strike that.

21 You said there were a series of conversations  
22 at PowerGen. Is that right?

23 A. Yes, that's correct.

24 Q. Do you recall where the first conversation  
25 took place?

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1 A. Probably just in the booth, the Indeck  
2 Keystone booth.  
3 Q. And who was present?  
4 A. A number of Indeck Keystone employees. The  
5 person I was primarily talking with would have been  
6 Chris Petcos.  
7 Q. Do you recall the names of any of the other  
8 individuals who were there?  
9 A. No, I don't. I know Jeff was probably there.  
10 But other than -- the individuals they brought to the  
11 show were all standing in the booth.  
12 Q. When you say "Jeff," are you referring to  
13 Jeff Coale?  
14 A. Yes.  
15 Q. Do you know who Jeff Coale works for?  
16 A. I believe he works for Marsha Forsythe.  
17 Q. And the company that he works for?  
18 A. Indeck, I think.  
19 Q. Anyone other than Mr. Petcos and Mr. Coale  
20 that you can recall who were present during this first  
21 conversation?  
22 A. I can't recall who was there.  
23 Q. Who primarily did the talking on behalf of  
24 Indeck at that time?  
25 A. Um, well, since I knew Chris the best and the

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1 longest, he is the one I preferred to hear from,  
2 honestly. And Chris was -- for me, at least, Chris  
3 was my primary contact.  
4 Q. To the best of your recollection, what did  
5 Mr. Petcos say relative to your continuing to  
6 represent both Victory Energy and Indeck Keystone  
7 Energy?  
8 A. My primary interest was to investigate the  
9 possibility of representing Indeck Keystone for  
10 aftermarket parts sales and to continue with Victory.  
11 Chris's response ultimately became, "You can't do  
12 that."  
13 Q. Did he say why?  
14 A. Well, they wanted -- Indeck Keystone wanted  
15 representation that would -- individuals and companies  
16 that would represent all of their products, not just a  
17 portion of the product line.  
18 Q. To the best of your knowledge, does Indeck  
19 Keystone Energy currently offer any water-tube package  
20 boilers for sale?  
21 A. Yes, they do.  
22 Q. Is there any limitation, to the best of your  
23 knowledge, on the size capacity for the water-tube  
24 package boiler that Indeck Keystone Energy is offering  
25 for sale currently?

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1 A. Um, I believe there is a restriction on what  
2 they can offer, yes.  
3 Q. What is your understanding of the restriction  
4 on what they can offer?  
5 A. I believe that, for package boilers, it has  
6 to do -- boilers have to be over 150,000 pounds an  
7 hour.  
8 Q. What is the basis for your understanding that  
9 the boilers have to be over 150,000 pounds per hour?  
10 A. Well, I believe that's what they've told us.  
11 And I am not sure if the contract states that or not,  
12 but that's what I've been told.  
13 Q. Did you have an understanding of the range of  
14 products that Victory Energy was licensed to sell  
15 Keystone boilers for as a licensee for Erie Power?  
16 A. I am not aware that it's a license from Erie  
17 Power that Indeck Keystone has.  
18 Q. I asked a bad question. Let me clean it up  
19 for you, okay?  
20 A. Okay.  
21 Q. Did you ever have an understanding of whether  
22 or not there was a limitation on the size capacity  
23 range for the boilers that Victory Energy was  
24 authorized to manufacture and sell from either Erie  
25 Power or Indeck Keystone Energy?

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1 A. Yes, I think there is a specific range in  
2 size and description of those boilers.  
3 Q. Do you know the upper limit of that size  
4 capacity?  
5 A. Well, I think it's, for Victory, for their  
6 license, is 150,000 pounds an hour nominally.  
7 Q. So to the best of your understanding, would  
8 it have been a conflict of interest for Christian  
9 Power to continue to represent Victory Energy for  
10 boilers below 150,000 pounds per hour of steam and  
11 Indeck Keystone Energy for boilers above 150,000  
12 pounds of power of steam?  
13 MR. WILLIAMS: Objection to the form.  
14 BY MR. SHEEAN:  
15 Q. You can answer.  
16 A. Well, my opinion usually doesn't count for  
17 much when manufacturers' principals are making  
18 decisions. I think it probably would be possible to  
19 do that.  
20 Q. Did you make that proposal to anyone at  
21 Indeck Keystone Energy during your discussions  
22 relative to continuing on as a rep for Victory Energy?  
23 A. No, I did not make that proposal.  
24 Q. Any reason why you didn't make that proposal?  
25 A. For me, I didn't think that would be where



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1 the cleanest split of product lines would lie. My  
2 feeling was that the cleanest split would be for me to  
3 represent the aftermarket existing boiler servicing  
4 for Indeck Keystone, balance of boilers for Victory.

5 Q. Did anyone at Victory Energy ever tell you if  
6 they would consider it to be a conflict of interest  
7 for you to represent Indeck Keystone Energy on the  
8 aftermarket parts and continue to represent Victory  
9 for the boilers?

10 A. To the best of my knowledge, nobody ever said  
11 that.

12 Q. What was your reaction when Mr. Petcos told  
13 you at PowerGen that it would not be possible for you  
14 to continue representing both Indeck Keystone Energy  
15 and Victory Energy?

16 A. It was a personal reaction. I was  
17 disappointed because it -- it -- it was going to  
18 result in me making a pretty tough decision that would  
19 affect, possibly affect, the balance of my product  
20 lines.

21 Q. Did you convey to Chris Petcos or anyone at  
22 Indeck that you considered this to be a tough  
23 decision?

24 A. Yes, I did.

25 Q. Do you recall any response to your voicing

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1 that -- strike that.

2 Did anyone from Indeck Keystone Energy  
3 respond when you told them this was a tough decision?

4 A. Yeah, they acknowledged it. They knew that  
5 some reps would have a difficult time making a  
6 decision.

7 Q. How did you leave it with Mr. Petcos and  
8 Mr. Coale in this first meeting on the floor of the  
9 PowerGen conference in Orlando in 2005 -- in 2004?

10 A. Well, it was an exchange of views, but not a  
11 decision, a meeting where any decisions were going to  
12 be made. I don't think at that point they were asking  
13 for a deadline for a decision. I don't recall that.

14 Q. When was the next -- strike that.

15 You said there were a series of conversations  
16 at PowerGen. When was the next conversation at  
17 PowerGen relative to whether or not you could continue  
18 as a representative for both Victory Energy and Indeck  
19 Keystone Energy?

20 A. Well, I went by the booth a number of times,  
21 but not for a meeting, just to say hello. But before  
22 the PowerGen was over, we did have a group of reps  
23 meet with Chris and Jeff off of the floor in a private  
24 room. Off of the display floor, not in a booth.

25 Q. Was this a preset meeting?

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1 A. What do you mean, "preset"?

2 Q. When did you first learn that there would be  
3 a meeting with Chris Petcos and Jeff Coale off the  
4 display floor with a group of representatives?

5 A. Oh, it was during the show. It had not been  
6 arranged for prior to that.

7 Q. How many other reps were in this meeting?

8 A. There were either three or four, including  
9 myself.

10 Q. Do you recall the names of any of those  
11 individuals?

12 A. Tom Patten, Gene Lockaby, Chuck Thacher. And  
13 I'm not sure who the other person was. It could have  
14 been Tommy Bronson, but I don't remember. I -- I  
15 don't remember.

16 Q. Do you know whether or not any of the other  
17 four individuals that you believe may have been at  
18 this meeting were at that time Victory Energy  
19 representatives?

20 A. To the best of my knowledge, I think they all  
21 were Victory representatives.

22 Q. And who primarily did the talking at this  
23 meeting? Was it Mr. Petcos?

24 A. I'd say it was about 50/50 between Chris and  
25 Jeff. I wouldn't say that one or the other conducted

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1 the meeting.

2 Q. How long did the meeting last?

3 A. Probably an hour.

4 Q. To the best of your recollection, what did  
5 Chris Petcos and Jeff Coale say, and what did the  
6 other representatives say who were there, including  
7 yourself?

8 A. Well, I think that was the first point in  
9 time where it was obvious that there wasn't going to  
10 be any negotiation with Indeck. We had to decide; we  
11 weren't going to be able to carve up portions of the  
12 lines from two different companies. It was pretty  
13 clearly stated that we had to make a decision.

14 Q. What did the reps say, to the best of your  
15 knowledge, if you recall?

16 A. Well, I guess one of the things that we  
17 needed to understand was what Indeck Keystone was  
18 going to be as a company, what products they were  
19 going to pursue, and just who they were going to be.  
20 And it's my opinion that nobody really knew at that  
21 point. I think Indeck Keystone was still trying to  
22 decide what they were going to do, but that's just my  
23 opinion; that wasn't stated.

24 Q. Anything else that you can recall from that  
25 meeting?

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1 A. Um, well, we did talk about details in the  
2 proposed Representative Agreement. So there were some  
3 discussions on the language in the proposed contract.

4 Q. What discussions relative to the language in  
5 the proposed contract do you recall?

6 A. Um, I don't recall all of the issues, but  
7 some pertain to what the commission schedule was going  
8 to be, what the treatment of commissions on rental  
9 boilers was going to be, and indemnification.

10 Q. Why was indemnification discussed, if you  
11 know?

12 A. Well, it's a -- it's an important point for  
13 me, but for most reps. It's frequently a discussion,  
14 a topic of discussion. It's frequently excluded, if  
15 possible, by manufacturers, and included, if possible,  
16 by reps. So it's not unusual that that be discussed.

17 Q. Did you have any concerns, going into the  
18 meeting, regarding what you perceived Indeck's  
19 position would be regarding the commission schedule?

20 A. Um, yes, I had a concern with the level of  
21 commissions and the method for crediting effort, and  
22 whether a portion of the commission could be  
23 attributed to the home office for their perceived  
24 contribution to the sales task.

25 Q. To the best of your knowledge at the time

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1 that you went into this meeting with Mr. Coale and  
2 Mr. Petcos, did Indeck have any type of a reputation  
3 in the industry relative to its treatment of  
4 representatives on commissions?

5 A. I don't know if I -- yeah, I think they  
6 did -- did have a reputation.

7 Q. What was that reputation, to the best of your  
8 knowledge?

9 A. I think, right or wrong, reps had the  
10 perception that -- that you had to fight for any  
11 commission on a sale. And you needed to be pretty  
12 cautious about dealing with Indeck. And I'm not  
13 saying that pertained to Indeck of today, but  
14 certainly was a reputation from the past.

15 Q. Was Marsha Forsythe at PowerGen in '04?

16 A. I don't recall seeing her. I don't know if  
17 she was there.

18 Q. You certainly didn't meet with her?

19 A. I didn't meet with her.

20 Q. Other than the conversation you had the first  
21 time you stopped by the booth, with Chris Petcos and  
22 Jeff Coale, and this subsequent one-hour meeting  
23 between Mr. Petcos, Mr. Coale, yourself, and three  
24 other reps, do you recall any other specific meetings  
25 during the PowerGen conference relative to whether or

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1 not Christian Power Equipment would be allowed to  
2 continue as a representative for both Indeck Keystone  
3 Energy and Victory Energy?

4 A. These are meetings between myself and an  
5 Indeck person, is that what you're saying?

6 Q. Well, let's -- no, I'm not limiting it in  
7 that way. Any other meetings whatsoever.

8 A. Well, the reps talked among themselves. But  
9 there were no meetings.

10 Q. What other reps did you talk to about that?

11 A. Um, I don't remember specifically all of the  
12 reps, but many of them go back at least 20 years, and  
13 so I've known quite a number. We were all uncertain  
14 where these companies were going, and so we were all  
15 talking about it. But we didn't have any specific  
16 meetings about it.

17 Q. Anything else that you can recall regarding  
18 your discussions with other representatives relative  
19 to this topic?

20 A. No, I wouldn't say so.

21 Q. To the best of your knowledge, did all four  
22 of the reps besides yourself who were at the meeting  
23 with Mr. Coale and Mr. Petcos at PowerGen in 2004  
24 terminate their rep agreement with Victory Energy and  
25 go over to Indeck Keystone Energy?

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1 MR. WILLIAMS: Objection to form, basis.

2 THE WITNESS: You know what, I don't know  
3 what all of the reps have done. I know at least one  
4 did not go back to Indeck Keystone.

5 BY MR. SHEEAN:

6 Q. Which one was that?

7 A. Tom Patten.

8 Q. Do you know if he's still a Victory Energy  
9 rep?

10 A. To my knowledge, he is.

11 Q. How about Gene Lockaby?

12 A. I don't know.

13 Q. How about Chuck Thacher?

14 A. I don't know what any of them did.

15 Q. Okay.

16 A. I should, but I don't know.

17 Q. When was the next time after the PowerGen  
18 conference in December 2005 (sic) that you had any  
19 conversation with anyone at Indeck relative to your  
20 ability to continue on as a rep for Victory Energy?

21 A. I don't recall specific conversations during  
22 the balance of December.

23 Q. When was the next date that you do recall?

24 A. I don't recall a specific date, but there  
25 were conversations in January. I think there might

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1 have been a revision of the proposed contract that was  
2 sent out in -- sometime in the early part of '05.

3 Q. Had you already seen a version of the  
4 proposed Representative Agreement prior to this first  
5 one going out in early 2005?

6 A. Yes, I had.

7 Q. When did you see that first version?

8 A. You know, I don't remember. I believe that I  
9 had it -- I may have had it -- before PowerGen. I  
10 don't remember for sure.

11 Q. Did the revisions in the proposed rep  
12 agreement that you received from Indeck Keystone take  
13 into account any of the concerns that were raised by  
14 you or any of the other reps during that meeting at  
15 PowerGen?

16 A. Yes, it did. There were modifications.

17 Q. Other than receiving this revised proposed  
18 Representative Agreement from Indeck Keystone Energy,  
19 when was the next conversation or communication of any  
20 kind that you had with anyone at Indeck Keystone  
21 Energy regarding your ability to continue as a rep for  
22 Victory Energy?

23 A. I don't recall a specific phone call. I know  
24 specifically it was a phone call, but I don't remember  
25 when that was. I'm going to say in January.

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1 Q. And who initiated the call that you're  
2 referring to?

3 A. I don't remember if I did or Chris Petcos  
4 did.

5 Q. It was between you and Mr. Petcos?

6 A. Yeah. Yes.

7 Q. And to the best of your recollection, what  
8 did you say and what did he say in this phone  
9 conversation?

10 A. Well, in early January, I was still undecided  
11 what I was going to do. I told him that.

12 Q. Anything that you can recall from that  
13 conversation?

14 A. Nothing specific, no.

15 Q. When was the next conversation, to the best  
16 of your recollection, with anyone at Indeck regarding  
17 whether you would continue on as a rep for Victory  
18 Energy?

19 A. Could you state that again?

20 Q. When was the next conversation, after the one  
21 you just identified sometime in 2005 where you  
22 indicated you were still undecided, with anyone at  
23 Indeck regarding whether you would continue on as a  
24 rep for Victory Energy?

25 A. In late January -- and I don't remember the

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1 specific call. But in late January, I notified, I  
2 think both Chris and Jeff, that I was going to cancel  
3 my representation with Victory and sign the Indeck  
4 Keystone contract.

5 Q. Was there any single -- strike that.

6 Did anything occur in January 2005 that  
7 caused you to sway your decision one way or the other?

8 A. Probably the contract modification and an  
9 internal evaluation. Having no contact with Victory  
10 or with Indeck, but my internal evaluation of the best  
11 business decision for Christian Power Equipment, Inc.

12 Q. What, if anything, did Mr. Petcos say when  
13 you communicated your decision to him?

14 A. Well, there had been such a long relationship  
15 with myself and -- we'll call it the Zurn product  
16 line -- all these different company names, he was  
17 happy I made that decision.

18 Q. Anything else that you can recall from that  
19 conversation?

20 A. No.

21 Q. And what did Mr. Coale say, if anything, that  
22 you can recall from that conversation where you  
23 informed him that you were going to sign the rep  
24 agreement with Indeck Keystone Energy?

25 A. I don't recall anything substantial. I'm

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1 sure he was pleased that I had chosen to switch to  
2 Indeck.

3 Q. Anything else that you can recall from either  
4 of those conversations?

5 A. No.

6 Q. When did you actually sign the rep agreement  
7 with Indeck Keystone Energy?

8 A. Well, I informed Mark White verbally on  
9 January 31. At least that's my -- best I can  
10 determine. And the contract was actually executed the  
11 11th of March. I don't remember the date that I  
12 signed it, but I think that's the date that's on the  
13 contract. I sent a letter, an official letter, on  
14 March 9th to Victory.

15 Q. What did Mr. White say when you told him that  
16 you were going to be cancelling?

17 A. He was disappointed. And it was -- he  
18 actually initiated the call -- I remember it  
19 distinctly -- because he was calling me to tell me  
20 they were cancelling my portion -- a portion of the  
21 territory I was going to cover. The Oregon-Washington  
22 territory was being taken away and given to a  
23 different agency. And in that same phone  
24 conversation, I informed him I'd made a decision to  
25 cancel the Victory contract.

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1 **package boilers?**  
 2 MR. SHEEAN: Objection, foundation.  
 3 THE WITNESS: I don't remember if the  
 4 literature talked about that.  
 5 BY MR. WILLIAMS:  
 6 **Q. To the best of your recollection, do you**  
 7 **recall whether any of those brochures indicated any**  
 8 **limitation on Victory's capacity to design or**  
 9 **manufacture Keystone water-tube package boilers?**  
 10 **A. I don't remember for sure, but I believe**  
 11 **that, at least for the Keystone product line, it**  
 12 **defined a size range.**  
 13 **Q. Do you remember what that size range was?**  
 14 **A. Um, you mean what the literature said it was?**  
 15 **Q. Yes, yes, exactly.**  
 16 **A. I don't remember what the literature said.**  
 17 **Q. Mr. Christian, if you would turn to paragraph**  
 18 **8(a) of the Representative Agreement. If you would**  
 19 **read that into the record, please.**  
 20 **A. "8(a). Representative shall not handle,**  
 21 **sell, distribute, or otherwise associate itself with**  
 22 **any equipment that is similar to or competes in any**  
 23 **way with the products."**  
 24 **Q. I know you're not a lawyer, so I'm not going**  
 25 **to try to ask you for any type of legal conclusion,**

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1 **but I -- and I'm sure that Mr. Sheean will interpose**  
 2 **an objection nonetheless. But I want to tell you that**  
 3 **my next question is based upon simply your**  
 4 **understanding as a principal of Christian Power**  
 5 **Equipment and your experience in the industry. Is**  
 6 **that fair?**  
 7 **A. That's fair.**  
 8 **Q. The question is, at the time that you signed**  
 9 **the Representative Agreement, did you have any**  
 10 **understanding as to what paragraph 8(a) meant?**  
 11 MR. SHEEAN: Objection, calls for a legal  
 12 conclusion.  
 13 You can answer.  
 14 THE WITNESS: Well, in my business, you sell  
 15 lots of allied and associated equipment. And  
 16 manufacturers have a primary product that they  
 17 manufacture that they're known for, but then they have  
 18 a lot of associated equipment that may not be primary,  
 19 but may be associated with what they sell.  
 20 This statement, in my mind, pertains to the  
 21 primary products that are being offered more than the  
 22 associated equipment that occasionally is offered.  
 23 And the statement states that you are not to represent  
 24 another company that manufactures or offers equipment  
 25 that compete directly with the primary products.

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1 BY MR. WILLIAMS:  
 2 **Q. And when you say primary product, can you**  
 3 **give me an example of what's in your head when you use**  
 4 **that term.**  
 5 **A. Well --**  
 6 MR. SHEEAN: Objection, form.  
 7 THE WITNESS: -- primary product in the case  
 8 that we're talking about might be package boilers.  
 9 That's an example of a primary product.  
 10 BY MR. WILLIAMS:  
 11 **Q. And to compare or contrast that, when you use**  
 12 **the term "associated equipment," what types of things**  
 13 **are you referring to?**  
 14 **A. Well, boilers come with a lot of other parts,**  
 15 **such as trim. That's valves and sensors and other**  
 16 **equipment. In some cases, boilers might come with**  
 17 **fuel-feeding devices, burners; back-end equipment:**  
 18 **fans, stacks, pollution-control equipment, all of**  
 19 **which might be offered, but it would probably be a**  
 20 **buyout item not manufactured by the boiler OEM.**  
 21 **Q. From the point in time when you executed the**  
 22 **Representative Agreement up until the present, has**  
 23 **your understanding of the meaning of paragraph 8(a)**  
 24 **changed in any way from what you've just testified to?**  
 25 **A. Um, the meaning can change over time as**

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1 **companies add or drop product lines. I don't believe**  
 2 **the meaning has changed, but I am -- I might be wrong**  
 3 **about that. I don't know if the meaning has changed.**  
 4 **Let me add something to that. For the period**  
 5 **of time that I represented Victory, I don't think the**  
 6 **meaning changed of the products.**  
 7 **Q. Fair enough.**  
 8 **Based upon your experience as a sales**  
 9 **representative, is that type of -- when I say "that**  
 10 **type," I mean the clause paragraph 8(a) of the Victory**  
 11 **Representative Agreement -- is that common in the**  
 12 **industry?**  
 13 **A. Whether the clause is in there, the intent of**  
 14 **that clause is common in the industry.**  
 15 **Q. All right, let's break it down.**  
 16 **Would you say that the intent is present 100**  
 17 **percent of the time?**  
 18 MR. SHEEAN: Objection, calls for  
 19 speculation, lack of foundation.  
 20 THE WITNESS: Could you expand on the  
 21 question? I don't understand the question.  
 22 BY MR. WILLIAMS:  
 23 **Q. Sure. You said that your answer -- if we**  
 24 **need to, we can have it read back. But I believe that**  
 25 **your answer was that whether or not the clause appears**



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1 in writing, the intent is there.  
 2 **My question is, how often is the intent there**  
 3 **in representative agreements?**  
 4 MR. SHEEAN: Objection, lack of foundation,  
 5 calls for speculation.  
 6 THE WITNESS: Well, I believe it's there. I  
 7 could give you examples where it's not enforced. Not  
 8 with the product lines that I handle, but with some  
 9 product lines, and for some types of agencies.  
 10 Generally, though, it doesn't apply in my case.  
 11 BY MR. WILLIAMS:  
 12 **Q. Okay. I'll try to ask it in a more specific**  
 13 **way, then. For all of the sales representative**  
 14 **agreements that you have entered into for the boiler**  
 15 **industry, has the intent been present for all of those**  
 16 **agreements?**  
 17 **A. I can't say that it's in there in writing. I**  
 18 **don't know.**  
 19 **Q. Okay. My question is still based upon the**  
 20 **spirit or the intent that you first spoke of.**  
 21 **A. Yeah, I believe that the companies that I've**  
 22 **associated with expect me to exclusively represent**  
 23 **them for their primary products.**  
 24 **Q. And as to written contracts that you have**  
 25 **entered into in your career and experience for boilers**

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1 and in the boiler industry, how often would you say  
 2 that a noncompete provision actually appears in  
 3 writing in the agreement?  
 4 MR. SHEEAN: Objection, calls for  
 5 speculation.  
 6 THE WITNESS: I don't know. More than half  
 7 of the time.  
 8 BY MR. WILLIAMS:  
 9 **Q. Has Christian Power Equipment, Inc. ever**  
 10 **represented two competing designers or manufacturers**  
 11 **for the same primary product line at the same time?**  
 12 **A. Not to my knowledge.**  
 13 **Q. And before it was Christian Power Equipment,**  
 14 **Inc., when it was just Christian Power Equipment, did**  
 15 **that company ever represent two competing**  
 16 **manufacturers or designers for boilers for their**  
 17 **primary products simultaneously?**  
 18 **A. Probably not, but let me give you an example.**  
 19 **When this license was signed with Victory, when the**  
 20 **license agreement occurred, I might have been one of**  
 21 **the last reps to sign an agreement with Victory**  
 22 **because I was very uncomfortable about the definition**  
 23 **of product. And there was a definition based on size**  
 24 **range more than anything, but it was a very un-Zurn**  
 25 **like, we'll say -- this is a long line of companies,**

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1 but some primary employees that stayed with the  
 2 company. This was very unlike that company to license  
 3 a product. So I was cautious about this potential  
 4 conflict that you're talking about.  
 5 **Q. Okay. My question was the predecessor to**  
 6 **Christian Power Equipment, Inc., Christian -- that is,**  
 7 **Christian Power Equipment --**  
 8 **A. Yeah.**  
 9 **Q. -- did that company ever represent two**  
 10 **competing designers or manufacturers of boilers for**  
 11 **their primary product line simultaneously?**  
 12 MR. SHEEAN: Objection, asked and answered.  
 13 You can answer again.  
 14 THE WITNESS: I think I did. When I signed  
 15 the licensing agreement with Victory and continued  
 16 with an Erie Power Technologies agreement. The  
 17 difference there was what Erie Power Technologies,  
 18 Inc. was willing to do, but at some time in their  
 19 past, they were willing to build package boilers. The  
 20 way the agreement was written, the employees of Erie  
 21 Power encouraged me and the other reps to sign that  
 22 agreement.  
 23 BY MR. WILLIAMS:  
 24 **Q. Do you have any understanding as to why the**  
 25 **folks at Erie Power encouraged you to sign that**

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1 agreement?  
 2 **A. Well, they either -- they weren't successful**  
 3 **in selling package boilers. And so even though they**  
 4 **had a pretty successful design, it was pretty much on**  
 5 **the shelf. And so they felt like there was some**  
 6 **value, but not in their hands, in someone else's**  
 7 **hands. So they licensed that to a company who was**  
 8 **willing to try to capitalize on the value of the**  
 9 **product design.**  
 10 **Q. And other than what we were just talking**  
 11 **about where Christian Power Equipment was representing**  
 12 **Victory and had the Erie Power agreement in place, did**  
 13 **Christian Power Equipment ever simultaneously**  
 14 **represent any other competing boiler designer or**  
 15 **manufacturers at the same time?**  
 16 MR. SHEEAN: Objection, vague.  
 17 You can answer.  
 18 THE WITNESS: Not to my knowledge.  
 19 BY MR. WILLIAMS:  
 20 **Q. Would you read paragraph 8(c)?**  
 21 **A. "Representative shall furnish VEO with a**  
 22 **complete list of companies and equipment it presently**  
 23 **represents, and agrees to continually notify VEO of**  
 24 **any changes in that representation."**  
 25 **Q. Did Christian Power Equipment ever furnish**

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1 **Victory with such a list?**

2 **A. I believe I did.**

3 **Q. Do you have any understanding as to the**  
4 **purpose of paragraph 8(c)?**

5 **A. Well, 8(c) puts the -- in my mind -- a**  
6 **portion, if not all, of the responsibility in**  
7 **determining these conflicts into the hands of the OEM.**  
8 **At least they have the opportunity to assess**  
9 **representation that the rep has and at least question**  
10 **those potential conflicts, I suppose.**

11 **Q. In your experience in this industry, is it**  
12 **common for the responsibility of determining a**  
13 **conflict to be on the OEM?**

14 **A. I think it's a joint responsibility. I don't**  
15 **think everybody believes that, but I think it's joint.**  
16 **This is a partnership we enter into, and if you don't**  
17 **have a very open relationship with that partnership,**  
18 **it won't be long term.**

19 **Q. Proceeding on to paragraph 10(d). I'll tell**  
20 **you what, I will give you a break from reading that**  
21 **into the record, and you can just read it to yourself.**

22 **A. (Witness complies.)**

23 **Okay.**

24 **Q. Did Victory ever do anything to comply with**  
25 **paragraph 10(d) of the Representative Agreement?**

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1 **A. Um, I believe they did. I never issued a**  
2 **proposal on my own; Victory prepared those. They**  
3 **occasionally asked me what the status of projects**  
4 **were, or I reported the status of projects. In terms**  
5 **of accepting orders, I didn't take orders in the name**  
6 **of my company; I instructed any customer that they**  
7 **were going to enter an order not with Christian Power,**  
8 **but with Victory. That's a few examples of, you know,**  
9 **the internal paperwork that Victory expected us to do**  
10 **and we conformed with.**

11 **Q. What about sales meetings; did Victory have**  
12 **sales meetings that someone from Christian Power**  
13 **attended during the term of the Representative**  
14 **Agreement?**

15 **A. Yes.**

16 **MR. SHEEAN:** I'm going to object to the  
17 extent that it's already been asked and answered.  
18 Sorry.

19 **THE WITNESS:** Yes, yes, we did attend. They  
20 had meetings, and we attended.

21 **BY MR. WILLIAMS:**

22 **Q. Okay. Were there any meetings that Victory**  
23 **had that you or anyone else from Christian Power**  
24 **attended that Mr. Sheean did not ask about or you did**  
25 **not testify about earlier this morning?**

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1 **A. Not to my knowledge.**

2 **Q. How about teleconferences among sales**  
3 **representatives; did Victory hold any of those while**  
4 **you were a representative of the company? Or while**  
5 **Christian Power was a representative of the company.**

6 **A. Not to my knowledge.**

7 **Q. Paragraph 12(a) of the Representative**  
8 **Agreement, if you would read that to yourself and let**  
9 **me know when you're finished.**

10 **A. (Witness complies.)**

11 **Okay.**

12 **Q. Do you have an understanding as to the**  
13 **meaning of that paragraph?**

14 **A. I may have a different understanding today**  
15 **than I did three weeks ago.**

16 **Q. Okay, well, then let's take it in order.**  
17 **What was your understanding of that paragraph at the**  
18 **time that you executed the Representative Agreement?**

19 **A. Historically, when a cancellation or a**  
20 **ceasing of a relationship has occurred, we've offered**  
21 **to return literature. That's generally what**  
22 **manufacturers expect, and we've done so.**

23 **Q. I take it from your prior answer, that**  
24 **understanding changed at some point?**

25 **A. Well, I'm not sure it's changed, but I've**

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1 **certainly got a new perspective on this. More as a**  
2 **service to my customers, I keep files for a long time.**  
3 **And frequently jobs come back to life, and so we -- we**  
4 **keep these files that are generally correspondence or**  
5 **proposals written by principals. And after a certain**  
6 **period of time, we destroy the file, if it's not an**  
7 **order. If it is an order, I keep it. So far, since**  
8 **'79 I've got every order I ever received. And this --**  
9 **this clause might bring into question whether I could**  
10 **do that.**

11 **I don't think I've ever had a principal**  
12 **question me as far as whether I keep files or not**  
13 **after the representation period ended. Certainly my**  
14 **commitment to that principal, whether I'm representing**  
15 **them or I just ended the representation, is to never**  
16 **share any of that information, even if I go to a**  
17 **competitor. Something I wouldn't do.**

18 **MR. WILLIAMS:** Okay, Mr. Christian, I believe  
19 we're out of tape, so we'll take a break.

20 **THE VIDEOGRAPHER:** This is the end of Tape  
21 No. 3. We're off the record at 1:25 p.m.

22 **(Recess taken.)**

23 **THE VIDEOGRAPHER:** This is the beginning of  
24 Tape No. 4. We're on the record at 1:38 p.m. You may  
25 proceed.

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1 understanding that paragraph 12(a) allows either party  
2 to the Representative Agreement to terminate the  
3 agreement without cause?

4 A. Yes, either party can do that without cause.

5 Q. Based upon your experience and years in the  
6 industry, is that a common clause that appears in  
7 representative agreements?

8 MR. SHEEAN: Objection, foundation, vague.

9 THE WITNESS: I believe it is common.

10 BY MR. WILLIAMS:

11 Q. And I'll ask it more specifically. With  
12 respect to Christian Power, is that a clause that  
13 appears in all of the representative agreements to  
14 which Christian Power has been a party over the last  
15 ten years?

16 A. No, it's not been in all of those contracts.

17 Q. Can you estimate the percentage or tell me  
18 the percentage of contracts to which Christian Power  
19 was a party and there was an at-will termination  
20 clause included?

21 A. Over 80 percent.

22 Q. When Mr. Sheean was asking you why Christian  
23 Power decided to terminate the Representative  
24 Agreement with Victory, you said two things. And feel  
25 free to correct me if I mischaracterize you or if I'm

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1 just flat-out wrong.

2 You said, number one, the contract  
3 modifications swayed you. And number two, the  
4 internal evaluation that you had done at Christian  
5 Power led you to believe that it was the best decision  
6 for the company.

7 MR. SHEEAN: I object. Mischaracterizes his  
8 prior testimony.

9 But you can answer.

10 BY MR. WILLIAMS:

11 Q. Well, the first question is, does that fairly  
12 characterize what you said earlier this morning?

13 MR. SHEEAN: Same objection.

14 THE WITNESS: That is a characterization,  
15 similar characterization, to what I stated. I made a  
16 business decision, and Indeck convinced me that I  
17 could probably trust them.

18 BY MR. WILLIAMS:

19 Q. Just so you know, I'm not trying to play any  
20 games. What I'm trying to do is avoid asking you  
21 questions that you've already been asked and that  
22 you've answered.

23 So with respect to the business decision that  
24 you made, what were the factors or conclusions that  
25 you analyzed in making that business decision?

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1 A. Well, the biggest factor is the percent of my  
2 business year in and year out that's constituted in  
3 the solid fuel aftermarket business, and those  
4 customers who rely on not just the products  
5 manufactured but my advice for a lot of other plant  
6 operating issues that are sales opportunities for me.

7 Q. Was revenue a factor that you considered in  
8 making that decision?

9 A. Well, it all boils down to revenue. But  
10 there's a big synergism between product lines. I  
11 would have lost that synergism, the anchor for that  
12 synergism, if I gave up my solid fuel aftermarket  
13 business.

14 Q. When you say "it all boils down to revenue,"  
15 is that to say that your expectation is that Christian  
16 Power would generate more revenue as a representative  
17 of Indeck and Indeck Keystone Energy than it would  
18 representing Victory?

19 MR. SHEEAN: Objection, incomplete  
20 hypothetical.

21 THE WITNESS: It's all speculation on what  
22 the long-term income was. But certainly the structure  
23 of my business and the short-term income was probably  
24 higher with Indeck. Not certainly, but probably.

25 BY MR. WILLIAMS:

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1 Q. Am I at least correct that you did say that  
2 the revisions to Indeck's proposed Representative  
3 Agreement swayed you or had some impact on you? Did I  
4 hear that right earlier this morning?

5 A. Yes.

6 MR. SHEEAN: Same objection.

7 THE WITNESS: I'm sorry.

8 Yes, that's true.

9 BY MR. WILLIAMS:

10 Q. Can you please tell me, though -- there were  
11 no questions about the details or the specifics. How  
12 was the proposed Representative Agreement from Indeck  
13 changed from the original to these revisions?

14 A. This is my recollection. I don't remember  
15 for sure, but I believe the Commission Schedule was  
16 changed. I'm certain that the wording for credit on a  
17 sale was changed. And there could have been a couple  
18 of other items that were changed in that contract.

19 Q. When you said the Commission Schedule was  
20 changed, are you referring to the percentages of  
21 commission paid out?

22 A. Yes, and for what type of work and for what  
23 products.

24 Q. And it may be obvious, but I have to ask.  
25 How was it changed? Was it increased, decreased?

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1 A. It was increased.

2 Q. You said wording for credit on sale was  
3 changed. Can you explain what you mean by that?

4 A. Well, some companies and some individuals  
5 involved in both of these companies have presided over  
6 contract administration where a portion of the sales  
7 credit was attributed to the home office, and with  
8 no -- with no possibility of influence from the rep,  
9 and thereby reducing the commissions paid. And all of  
10 the reps were very concerned about that issue.

11 Q. And so how was the wording for credit on the  
12 sale changed in the revision of the proposed Indeck  
13 Representative Agreement?

14 A. You know, I can't answer specifically. It  
15 took a form that I felt like represented good intent.

16 Q. Did it provide for more liberal application  
17 of commissions?

18 A. What it did was state that -- I believe it  
19 states that 100 percent of the possible commission  
20 would be awarded on every job. If it doesn't state  
21 that, we had a verbal commitment to it.

22 Q. Okay. And as we sit here today, can you  
23 recall any other details about the changes or  
24 revisions to the proposed Indeck Representative  
25 Agreement?

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1 A. I really can't.

2 Q. Mr. Christian, if you would turn, in  
3 Exhibit 11, to the page toward the end. I think you  
4 marked it with a 2 in the upper right-hand corner, the  
5 March 9 letter to Mark White.

6 A. (Witness complies.)

7 Q. Prior to your conversation with Mr. White on  
8 February 2nd where he told you that Victory was taking  
9 away part of your territory, had you had any other  
10 conversations with anyone at Victory regarding an  
11 assessment of Christian Power's performance under the  
12 Representative Agreement?

13 A. No.

14 Q. Were there ever any talks or discussions  
15 prior to February 2 of 2005 about performance of  
16 Christian Power under the agreement?

17 A. You mean lack of performance or any kind of  
18 performance?

19 Q. Any kind of performance: good, bad.

20 A. There were discussions and compliments given  
21 to the quality of representation I was providing.  
22 Meaning that it was good quality.

23 Q. How about bad?

24 A. No, I don't remember any bad. Could be  
25 selective memory, but, no, I don't think so.

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1 Q. During the February 2, 2005 conversation that  
2 had you with Mr. White, did he do anything to try and  
3 persuade Christian Power to reconsider its decision to  
4 terminate the Representative Agreement?

5 A. Um, I don't believe that he did. It was a  
6 fairly brief conversation. I don't remember that  
7 there was much give and take at all about the decision  
8 I'd made or why or an attempt to try to persuade me  
9 not to do that.

10 Q. Other than Mr. White, did anyone from  
11 Victory -- anyone else from Victory -- try to persuade  
12 Christian Power to stay on as a representative?

13 A. No, I don't believe so.

14 Q. At any time, did anyone from Victory ever  
15 tell Christian Power that it should not do business  
16 with Indeck or any of its affiliates?

17 A. No.

18 Q. At any time, has anyone from Victory ever  
19 told Christian Power anything negative or disparaging  
20 about Indeck or any of its affiliates?

21 MR. SHEEAN: Objection, vague.

22 THE WITNESS: Um, I don't believe so. I  
23 don't remember anybody ever saying negative -- making  
24 negative comments about Indeck.

25 BY MR. WILLIAMS:

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1 Q. Did anyone at Victory ever say anything  
2 negative or disparaging about any of Indeck's  
3 employees or employees of any affiliate of Indeck to  
4 you?

5 A. No, no.

6 Q. Again, just to try and streamline this, I'm  
7 going to characterize your earlier testimony. You  
8 tell me if I'm right or wrong, and we'll use that as a  
9 springboard to go from there.

10 You said earlier this morning that you don't  
11 think Indeck initially -- Indeck Keystone Energy --  
12 initially knew what kind of company it wanted to be or  
13 what kind of products it wanted to design or  
14 manufacture.

15 Is that an accurate characterization?

16 A. Yes, it is.

17 Q. What's your basis for that?

18 A. Well, I'll point to this most recent order  
19 that we gave back. There was a lot of effort put out  
20 to put together a proposal, revise it, work with the  
21 customer. This wasn't a case of a customer calling or  
22 me stumbling over someone and getting a very quick,  
23 no, we don't want to pursue this. We went all the way  
24 through design and detail pricing and receiving a  
25 purchase order, and then changed our mind. That's an



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1 place. And those comments go way back. It must be  
2 the early days of Erie Power. But that wasn't  
3 pertaining to the details; it was just the concept of  
4 licensing a boiler.

5 BY MR. WILLIAMS:

6 **Q. Are you referring to a conversation that you**  
7 **had with Mr. Petcos while Erie Power was in existence?**

8 **A. Yeah, that would go back to the Erie Power**  
9 **days. And I don't know that there was a specific**  
10 **conversation; I just heard it said.**

11 **Q. Skipping forward to after the formation of**  
12 **Indeck Keystone Energy, LLC, did Mr. Petcos ever make**  
13 **any representations to Christian Power one way or the**  
14 **other regarding whether IKE would honor the license**  
15 **agreement that was in place with Victory?**

16 **A. No.**

17 **Q. Are there other boiler sales representatives**  
18 **that are active in the same territories in which**  
19 **Christian Power is active?**

20 **A. Yes.**

21 MR. SHEEAN: Objection, vague.

22 THE WITNESS: I'm sorry.

23 Yes, there are. I have competitors.

24 BY MR. WILLIAMS:

25 **Q. Who are they?**

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1 **A. Um, A.H. Merrill & Associates. They've**  
2 **changed their name to AHM now. R.F. McDonald.**

3 **I'm assuming you're asking this in terms of**  
4 **package boilers. Are you asking about package boilers**  
5 **or all types of boilers?**

6 **Q. I'm asking about all types of boilers; let's**  
7 **include everyone.**

8 **A. Um, Nationwide Boiler, B&W. Let's see. Ted**  
9 **Pullen. That's not the name of his company, that's**  
10 **the name of the individual, the name of a person.**  
11 **Brad Thompson. Cole Industrial, C-o-l-e, Cole**  
12 **Industrial. Floyd Welch & Associates. I'm sure there**  
13 **are others. That's a pretty representative example**  
14 **sample.**

15 **Q. In your opinion from your years and**  
16 **experience in the industry, are the representatives**  
17 **that you've listed for us here competent**  
18 **representatives?**

19 **A. Um, I think most of them are competent. They**  
20 **all have their strengths and their weaknesses, but**  
21 **they're competent.**

22 **Q. With respect to the eight sales**  
23 **representatives that you listed that compete in your**  
24 **territory, are any of those limited to water-tube**  
25 **package boilers?**

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1 **A. I don't know if any sales company would say**  
2 **they were limited to anything. I mean, we're pretty**  
3 **independent. Some people would say roguelike. But**  
4 **one of those companies is really focused on package**  
5 **boilers.**

6 **Q. Which one is that?**

7 **A. That's R.F. McDonald.**

8 **Q. I take it none of those eight companies or**  
9 **representatives that you've listed also represent**  
10 **Indeck currently.**

11 **A. I don't know who -- oh, no, none of those**  
12 **companies represent Indeck.**

13 **Q. Of the eight companies that we were just**  
14 **talking about, do you know the reputation of any of**  
15 **them?**

16 MR. SHEEAN: Objection, asked and answered.

17 THE WITNESS: Well, reputation is a  
18 subjective thing. My opinion of their reputation is  
19 different than the next person's. But I do know the  
20 reputation of some of those companies.

21 BY MR. WILLIAMS:

22 **Q. Which ones do you know?**

23 **A. Probably all of them. I have a reputation**  
24 **opinion on all of them.**

25 **Q. Is it the same, or do we need to go through**

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1 **it individually? You tell me.**

2 **A. It's widely varying.**

3 **Q. Why don't we then go through them.**

4 **Your understanding of AHM's reputation, what**  
5 **is that?**

6 **A. It's excellent. They are the Coen**  
7 **representative, Coen Burner, C-o-e-n, the Coen Burner**  
8 **representative. And their company is structured like**  
9 **mine, and they function mostly as a rep as opposed to**  
10 **a distributor or buy/resell service company.**

11 **Q. What about R.F. McDonald's reputation?**

12 **A. They are far and away the largest boiler,**  
13 **package boiler, service company in California. And**  
14 **because they're large, they have a reputation for**  
15 **being available and, in many cases, competent.**  
16 **They've grown rapidly, and in some cases they also**  
17 **have a reputation of not having consistent quality.**  
18 **Sometimes -- and it may be because of their size, but**  
19 **sometimes they have not satisfied their customers.**

20 **They are a case of a company that will sign**  
21 **these kind of agreements with two or three competing**  
22 **companies and represent three, maybe four companies**  
23 **producing the same product, and choose for themselves**  
24 **who gets the inquiry. Because of their size, they get**  
25 **away with that.**

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1 **Q. Is that an anomaly in the industry?**  
 2 **A. You know, I don't know. It's certainly an**  
 3 **anomaly in the rep business. But in the service**  
 4 **company and distributor business, it may be more the**  
 5 **norm.**  
 6 **Q. How about Nationwide Boiler's reputation?**  
 7 **A. Nationwide's got a good reputation. They're**  
 8 **very similar to Indeck in that they're a rental boiler**  
 9 **company, and they will sell new boilers. They pretty**  
 10 **much had the West Coast rental market to themselves**  
 11 **because they don't have very many competitors that**  
 12 **carry a fleet located in the West. They've been**  
 13 **successful selling package boilers.**  
 14 **Q. How about B&W's reputation as a sales**  
 15 **representative in your area?**  
 16 **A. Well, B&W is representing their own products.**  
 17 **They have a very excellent reputation for boiler**  
 18 **knowledge. And they are a company that people who run**  
 19 **large utility-sized boilers turn to for service.**  
 20 **They'll quote large package boilers directly, but**  
 21 **under a certain size -- and I don't know -- under**  
 22 **200,000 pounds an hour, they hope that Nationwide will**  
 23 **sell for them.**  
 24 **Q. What about Ted Pullen's reputation?**  
 25 **A. He's got a good reputation. He's strictly a**

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1 **manufacturer's representative, and he handles large**  
 2 **boilers and turbines and is well regarded in the**  
 3 **industry.**  
 4 **Q. And Brad Thompson's reputation?**  
 5 **A. Brad is also a rep who handles similar**  
 6 **product lines, large capital equipment. He's known to**  
 7 **be technically competent but maybe not quite as**  
 8 **trustworthy as some of the other reps. But he's done**  
 9 **a very good job with some accounts.**  
 10 **Q. How about Cole Industrial's reputation?**  
 11 **A. That's sort of changing. They've grown from**  
 12 **a small, regional service company to a much larger**  
 13 **full service supplier of services and products. And**  
 14 **they are considered to be a good, very good, supplier.**  
 15 **Q. And Floyd Welch's reputation?**  
 16 **A. They were probably the No. 1 power rep in**  
 17 **Northern California. They've shrunk to one retiring**  
 18 **individual, so their reputation is really at a low,**  
 19 **low point now. But they'd be thought of as a boiler**  
 20 **supplier at least up until the last year.**  
 21 **Q. Going back to the Representative Agreement**  
 22 **with Victory Energy. Would you turn to -- I think**  
 23 **it's one of the last pages -- it is the last page of**  
 24 **the Representative Agreement. It's titled Product**  
 25 **Schedule.**

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1 **A. (Witness complies.)**  
 2 **Q. It states, "Product Schedule.**  
 3 **"The following products are included within**  
 4 **this agreement."**  
 5 **"Keystone water-tube boilers: 8M - 22M**  
 6 **(29,000 pph - 157,000 pph);**  
 7 **"VEO HRSG's (heat recovery steam generator)**  
 8 **systems - all sizes."**  
 9 **Did I read that correctly?**  
 10 **A. That's what I have on my contract. I think**  
 11 **you did.**  
 12 **Q. Good. Had you read that at the time that you**  
 13 **executed the Representative Agreement?**  
 14 **A. Yes.**  
 15 **Q. Other than -- strike that.**  
 16 **Mr. Christian, I believe you testified that**  
 17 **you had never seen a copy of the license agreement**  
 18 **between Victory and Erie Power or any successor that**  
 19 **purchased that technology. Is that correct?**  
 20 **A. That's correct.**  
 21 **Q. Did you or anyone from Christian Power ever**  
 22 **request to see a copy of that license agreement?**  
 23 **A. No.**  
 24 **Q. Did anyone from Victory Energy ever offer to**  
 25 **provide you with a copy of the license agreement?**

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1 **A. No.**  
 2 **Q. Did Victory ever give Christian Power any**  
 3 **instructions regarding which size boilers to target in**  
 4 **its sales efforts?**  
 5 **MR. SHEEAN: Objection. Other --**  
 6 **Go ahead.**  
 7 **I'm going to object because I think it**  
 8 **mischaracterizes the document in front of us.**  
 9 **But go ahead; you can answer.**  
 10 **THE WITNESS: This contract language here in**  
 11 **writing states what size of boilers that we were to**  
 12 **pursue that were the Keystone water-tube type.**  
 13 **BY MR. WILLIAMS:**  
 14 **Q. Okay. And that's fair. I'll rephrase the**  
 15 **question.**  
 16 **Other than what is set forth on the Product**  
 17 **Schedule, did Christian Power receive any instructions**  
 18 **from anyone at Victory regarding which size Keystone**  
 19 **package water-tube boilers Christian Power should**  
 20 **pursue on its behalf?**  
 21 **A. No, I never received any document, other than**  
 22 **this document.**  
 23 **Q. And my question applies not just to**  
 24 **documents, but verbally, on the telephone, by e-mail,**  
 25 **in any mode of communication.**